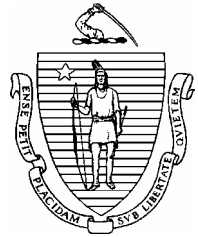


Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 716

IN THE MATTER
OF
STEVEN SILVA

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Steven Silva pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 12, 2004, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Silva. The Commission has concluded its inquiry and, on November 4, 2004, found reasonable cause to believe that Silva violated G.L. c. 268A, § 23(b)(2).

The Commission and Silva now agree to the following findings of fact and conclusions of law:

-Findings of Fact-

1. During the time relevant, Silva was the Department of Corrections ("the DOC") MCI-Cedar Junction Superintendent of Operations. As such, he was the second highest-ranking employee at Cedar Junction. Cedar Junction has a hierarchical chain of command.

2. On March 19, 2004, Silva was out of work and recovering from surgery at home. (Silva lives in Bellingham, which is approximately 15 miles away from the prison.) Silva called Lieutenant Raymond Turcotte, who was working his shift in the Departmental Disciplinary Unit at the prison. Silva told Turcotte that he had a wedding the next day and did not have time to get his hair cut. Silva asked Turcotte to come to his (Silva's) house and cut his hair. Turcotte had approximately two hours left on his shift. Turcotte agreed to cut Silva's hair.

3. Silva told Turcotte that he would take care of Turcotte's time and that he should not punch out. Silva planned on using off-the-records "comp" time that he said he owed Turcotte. There was no documentation of this off-the-records "comp" time nor did the DOC superintendent or any policy manual authorize any such practice.

4. Silva then called Shift Commander Thomas Borroni and told him that he had a wedding the next day and asked Borroni if there was enough staff on duty to have Turcotte relieved from his assigned position to come to Silva's house to cut his hair. Borroni told Silva there was enough coverage to allow Turcotte to leave early. Silva told Borroni not to charge Turcotte for the time because he owed him (Turcotte) time.

5. Once another lieutenant relieved him, Turcotte, following Silva's instructions, signed out a pair of hair clippers from the tool crib at the prison, left the facility and drove to Silva's home.

6. The standard procedure for leaving early was for a prison employee to fill out paperwork in the morning stating what type of time he intended to use (for example, vacation time or personal time). The shift commander then reviewed the requests for that day and granted them by seniority if staffing was sufficient. Turcotte did not fill out the standard paperwork for early release and was not charged any time for the two hours of his shift he did not serve. His compensation for this time was approximately \$85.

7. Silva, as second in command and as part of his official duties, was regularly involved in various personnel and assignment decisions involving both Turcotte and Borroni.

8. Silva and Turcotte have been close friends for many years. Turcotte has cut Silva's hair for several years.

9. Borroni has a friendly work relationship with Silva. According to a DOC investigator, "Borroni stated that he felt that there was an implied order in the manner that Deputy Superintendent Silva spoke."

10. As a result of this incident, Silva was demoted to sergeant.

-Conclusions of Law-

11. Section 23(b)(2) prohibits public employees from, knowingly or with reason to know, using or attempting to use their official position to secure for themselves or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

12. As the then DOC MCI-Cedar Junction Superintendent of Operations, Silva was a state employee pursuant to G.L. c. 268A, § 1.

13. By as deputy superintendent requesting a captain to have a lieutenant excused from his prison duties, Silva used his official position. Where Silva was a superior officer above the captain, lieutenant and others and had the ability to take action concerning their employment, Silva knew or had reason to know that he was using his official position and that his request would likely be viewed as an implied order.

14. An at-home haircut upon request is a privilege.

15. It was unwarranted as Turcotte did the haircut on state time; either without taking any time or using undocumented "comp" time that only Silva maintained and without going through the standard operating procedures.

16. The privilege was of substantial value because: the cost of an at-home hair cut on demand is worth at least \$50. In addition, the two hours of compensation (approximately \$85) the state paid to the lieutenant while he was cutting Silva's hair exceeded \$50.

17. This privilege was not properly available to similarly situated individuals.

18. Thus, by requesting that a subordinate be excused without being charged any time so that the subordinate could give him a haircut, Silva violated G.L. c. 268A, §23(b)(2).

19. This conduct is particularly troubling in light of the senior level of the subject, his using another's "off-the-books" comp time for his personal benefit and his requesting that a correctional officer leave a maximum security institution before his shift ended for the purpose of providing him, Silva, with a hair cut.

-Resolution-

In view of the foregoing violation of G.L. c. 268A by Silva, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Silva:

- (1) that Silva pay to the Commission the sum of \$1,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2); and
- (2) that Silva waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: December 21, 2004